IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 14550 of 2004

Between:

1 Kanakam Seethamma, W/o. Late Venkaiah,
R/o. Sundaraiah Nagar, Khammam Urban Mandal,
Khammam District.

2 Kanakam Pitchamma, W/o. Late Narasimha Rao,
R/o. Sundaraiah Nagar, Khammam Urban Mandal,
Khammam District.

..... PETITIONERS

AND

1 Gunti Malleswara Swamy Temple, Khammam, Represented by Executive Officer.
2 The Assistant Commissioner, Endowments, Khammam, Khammam District.
3 The Mandal Revenue Officer, Khammam Urban Mandal, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in trying to evict the petitioners and also not allowing them to enter into their lands in Sy. No. 165 and 166 respectively admeasuring Ac.3.33 guntas situated at Khammam Village and Mandal, Khammam District, without due process of law either under the Land Acquisition Act or under A.P. Charitable and Hindu Religious Endowments Act, 1987 as illegal, arbitrary and violative of Article 21 of the constitution of the India and against A.P.(TA) Tenancy and Agriculture Lands Act, 1950 and consequently direct the respondents not to evict the petitioners from the Schedule Lands without following due process of law.

Counsel for the Petitioner: MR.P.RAVI SANKAR

Counsel for the Respondent No.1: Mr. K. RAVI.
Counsel for the Respondents No. 2 and 3: GP FOR ENDOWMENTS

The Court made the following :

O R D E R:

The petitioners, claiming to be the protected tenants of an extent of Ac.3.33 guntas in Survey No.165 and 166 of Khammam, of lands belonging to Gunti Malleswara Swamy temple, have filed this writ petition alleging that the respondents are trying to evict them and are not allowing them to enter into their lands, without any authority of law.

They claim to have been in possession of the lands including through their ancestors since 1929, that the second petitioner's father in law one Kanakam Venkanna @ Venkaiah was a lessee of the lands of the first respondent-temple and was issued a protected tenant certificate under Sections 35 and 37 of the Hyderabad Tenancy and Agriculture Land Act, 1950.

On behalf of the first respondent, a counter-affidavit is filed denying the petitioners' claims. It is specifically contended by the answering respondent that any claims of the petitioners over the lands belonging to the first respondent-temple would have to be urged under the provisions of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (the Act) and not under Article 226 of the Constitution of India. It is also pleaded in the counter-affidavit that these lands belong to the temple and were leased out to the family members of the petitioners. No ownership rights can be claimed nor any protected tenant certificate could be granted in favour of the petitioners is the contention. The counter-affidavit also asserts that the petitioners are not in possession of the lands in question and that the lands are not useful for cultivation at present. As these lands have now become urban lands and are useful only as house sites, no relief could be granted to the

petitioners is the further contention of the answering respondent.

On the available pleadings, disputed questions of fact and contentious positions of law arise for consideration. Such issues are more appropriately adjudicated in the first instance, either before the authorities under the provisions of the Act or before the civil court of competent jurisdiction, if the petitioners have a grievance that the respondents are interfering with their long possession of the lands in question, without due process of law. In any event, an application under Article 226 of the Constitution of India is not the appropriate remedy.

On the above analysis, this Court is not inclined to interfere and the writ petition is dismissed with liberty to the petitioners to pursue appropriate alternative remedies including under the statute.

The interim order dated 17-08-2004 stands defunct.

_____

(**GODA RAGHURAM, J**)

Date: 08-02-2005

ghn

To

1 The Executive Officer, Gunti Malleswara Swamy Temple, Khammam.
2 The Assistant Commissioner, Endowments, Khammam, Khammam District.

3 The Mandal Revenue Officer, Khammam Urban Mandal, Khammam District.

4 Two CCs to the Government Pleader for Endowments, High Court Buildings, Hyderabad. (O.U.T.)

5 Two CD copies.